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Attorneys for Plaintiff  
XIMPLEWARE CORP.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

# **XimpleWare Corp., a California Corporation.**

**Plaintiff:**

V.

**Versata Software, Inc., f/k/a Trilogy Software, Inc.**, a Delaware corporation; **Trilogy Development Group, Inc.**, a California corporation; **Ameriprise Financial, Inc.**, a Delaware corporation; and **Ameriprise Financial Services, Inc.**, a Delaware corporation,

### Defendants.

Case No. 3:13-cv-5160-NC

**DECLARATION OF JACK RUSSO IN SUPPORT  
OF PLAINTIFF XIMPLEWARE CORP.'S  
*Ex Parte* APPLICATION FOR TEMPORARY  
RESTRAINING ORDER, ORDER TO SHOW  
CAUSE, AND ORDER GRANTING EXPEDITED  
DISCOVERY**

1 I, Jack Russo, declare as follows:

2 1. I am an attorney admitted to practice before this Court, and I am a partner at the  
3 law firm of ComputerLaw Group LLP, counsel for Plaintiff XimpleWare Corp. ("XimpleWare")  
4 in this matter. I have personal knowledge of the facts set forth in this declaration, and if called to  
5 do so I could and would testify competently to the same. I make the statements here of my own  
6 personal knowledge, unless where stated on information and belief, which statements I believe to  
7 be true, and if called to do so, I could and would testify competently to those matters stated here.

8 2. XimpleWare engaged my firm shortly after learning, from counsel for Ameriprise,  
9 that Versata and related entities had incorporated XimpleWare's copyrighted VTD-XML  
10 computer software into Versata's DCM product, and had distributed the DCM commercially—  
11 but without obtaining any form of commercial license from XimpleWare, and in violation of the  
12 GPL license under which XimpleWare otherwise licensed its VTD-XML computer software to  
13 those who fully abide by the GPL license.

14 3. On the morning of July 24, 2013, I spoke with counsel for Ameriprise, Peter  
15 Lancaster of Dorsey & Whitney LLP. In that phone call, Mr. Lancaster told me how Ameriprise  
16 had discovered during litigation with Versata in Texas state court that Versata had included  
17 XimpleWare's VTD-XML software product within the Versata DCM software product. Mr.  
18 Lancaster said that Ameriprise had been a Versata customer since about 1999, and used the DCM  
19 product internally with Ameriprise employees and contractors.

20 4. **Exhibit 1** is a document I received from counsel for Ameriprise, Mr. Lancaster on  
21 July 28, 2013. The exhibit is apparently a set of clauses from a software license. I provided this  
22 exhibit to XimpleWare, and XimpleWare confirmed that it had never licensed any software under  
23 the terms in this exhibit, nor had it ever authorized anyone else to do so.

24 5. I spoke again with Mr. Lancaster by phone on August 19, 2013. Mr. Lancaster  
25 told me that Ameriprise had retained a technical expert who had concluded that XimpleWare's  
26 software was in Versata's DCM product.

27 6. On October 2, 2013, my firm received an Amended Notice of Deposition of  
28 XimpleWare Corp., a copy of which is attached as **Exhibit 2**.

1       7.     On November 4, 2013, my partner Christopher Sargent, Esq. spoke with Amir  
 2 Alavi, Esq., counsel for Versata, by telephone. Mr. Alavi acknowledged his client's use of the  
 3 XimpleWare computer software but claimed reliance on the "classpath exception" language from  
 4 Exhibit 1, which XimpleWare has never authorized or approved.

5       8.     On November 6, 2013, my office served objections to Ameriprise's and Versata's  
 6 deposition notices to XimpleWare, copies of which are attached as **Exhibit 3**.

7       9.     My office has had several communications with Ameriprise's legal team  
 8 throughout this month. For example, on November 12, 2013, an associate in my office, Ansel  
 9 Halliburton, Esq., spoke with Case Collard, Esq., another attorney for Ameriprise, regarding  
 10 XimpleWare's deposition and the possibility of reaching an agreed schedule for exchanging early  
 11 discovery in this case and which would satisfy Ameriprise's and Versata's needs for their  
 12 litigation in Texas state court while protecting XimpleWare.

13      10.    Though no one from Ameriprise ever connected with me by either phone or email  
 14 this morning, I learned late this afternoon that some type of voicemail was left from a lawyer for  
 15 Ameriprise that it was planning to appear *ex parte* in state court here in California to seek to  
 16 enforce deposition subpoenas and compel XimpleWare's deposition. Ameriprise took this  
 17 position despite my multiple previous offers to reach an agreed schedule for mutual discovery,  
 18 including the discovery sought in those subpoenas. I renewed that offer again today, and  
 19 informed counsel for Ameriprise that I would be unable to appear at its contemplated *ex parte*  
 20 hearing because of another case in Los Angles, and that XimpleWare did oppose its motion and  
 21 still preferred to reach an agreed schedule across the various cases in the Texas state and  
 22 California federal courts. Counsel for Ameriprise again rejected my offer for a mutual approach.

23 **Exhibit 4** is a true and correct copy of these November 21 communications.

24      11.    The following exhibits are true and correct copies of court filings in the Versata  
 25 litigation in Texas state court, *Versata Software, Inc., et al. v. Ameriprise Financial, Inc., et al.*,  
 26 Case No. D-1-GN-12-003588 in the District Court of Travis County, Texas. My firm obtained  
 27 these filings directly from the Texas state court files.

- 1       • **Exhibit 5:** Versata's First Amended Complaint and Application for
- 2              Preliminary Injunction, filed May 3, 2013
- 3       • **Exhibit 6:** Ameriprise's Original Answer, filed January 4, 2013
- 4       • **Exhibit 7:** Ameriprise's Motion for Partial Summary Judgment, filed July 24,
- 5              2013, and excerpts of some of the exhibits filed in support of that motion are
- 6              contained within said Exhibit 7.

7       12. **Exhibit 8** is a true and correct copy, obtained directly from the U.S. Copyright  
8 Office, of the copyright registration certificate for VTD-XML, version 2.3. The registration's  
9 effective date is September 4, 2013, and the registration number is TX 7-727-556.

10      13. **Exhibit 9** contains true and correct copies of current websites of Versata and its  
11 related entities, some of which tout speed as a major selling point for Versata's DCM product.

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13       I declare under penalty of perjury under the laws of the State of California that the  
14 foregoing is true and correct, and that I signed this declaration on November 21, 2013 in Palo  
15 Alto, California.

16       /s/ Jack Russo

17       Jack Russo